IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Arbitration Petition No.25 of 2006

Lahorimal Jethanand,
through General Power of Attorney
Shamlal H. Chandnani & anr. ... Petitioners

v/s.

M/s.S.R.Doshi Finance and
Investment Ltd. & ors. ... Respondents

Mr.R.D. Soni i/by M/s.Ram & Co. for petitioners.

Mr.Pankaj Kawli i/by M/s.Thakore Jariwala &
Associates for respondent No.1.

CORAM : H.L. GOKHALE, ACTING C.J.

DATED : 2nd February 2007

P.C. :

1. Heard the learned Counsel for the parties.

2. This Arbitration Petition is stated to be filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("the said Act" for short) and it seeks that a sole arbitrator be appointed to adjudicate upon the disputes between the parties concerned in respect of the Agreement dated 9th July 2004.

3. Mr.Soni, learned Counsel appearing for the petitioners, has drawn our attention to Clause 11 of the said Agreement which reads as follows:-

> "11. If on whatsoever reason if any disputes or differences are arisen by the parties under this MOU and/or by any of the papers, documents or writings then the same shall be referred to the arbitration of sole arbitrator as per Arbitration and Conciliation Act, 1996 and re-enactment thereof appointed only by the party of the Second Part and decision thereof shall be binding upon all the parties in all respects."

Mr.Soni submits that under this clause the first part clearly says that the disputes or differences between the parties are to be referred to the arbitration of a sole arbitrator as per the Arbitration and Conciliation Act. The second part of this clause says that the arbitrator concerned has to be appointed only by the party of the second part. He therefore submits that the second part is in contradiction with the first part. His submission is that inasmuch as the appointment is to be under the Arbitration and Conciliation Act, it has got to be made by the Chief Justice and it cannot be left to a party.

4. Mr.Kawli, learned Counsel appearing for respondent No.1, has, on the other hand, drawn my attention to Section 11(2) of the said Act. This section says that subject to sub-section (6) the parties are free to agree on a procedure for appointing an arbitrator or arbitrators. He submits that the entire clause is to be read together and under that clause it is very clear that the parties agreed that the arbitrator is to be appointed by the party of the second part.

5. Mr.Soni appearing for the petitioners submitted that there was no invocation of Clause 11 prior to the reference and no such letter, as claimed by the party of the second part, was ever received by the petitioners. On the other hand I find that this Clause 11 has been invoked under the letter dated 14th November 2005 in no uncertain terms. Although Mr.Soni contended that such a letter was not received and he took me to the contents of the Petition, there is no specific averment therein that any such letter was not received. In view thereof, there is no substance in the submission that the party of the second part had not invoked Clause 11 which provides for arbitration.

6. In my view, the Advocate concerned has been rightly appointed as an arbitrator by following the requirements under Section 11 of the said Act. There is no need that this Court should appoint an arbitrator when the arbitrator has already been appointed.

7. Petition is rejected in the view of the above.

8. The petitioners are at liberty to raise the objections whatever they want to raise before the arbitrator.

(ACTING C.J.)